IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2004

CORAM

THE HONOURABLE MR.JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS.JUSTICE R. BANUMATHI

W.P NO.29806 OF 2003
and
WPMP.NO.36359 OF 2003
and
WVMP.NO.2200 OF 2003

1. State Agricultural Marketing Board,
Rep. by its Chief Executive Officer,
TNCS Commercial Complex,
Anna Nagar West, Chennai 40.

Now having office at CIPET Road,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai 32.

2. The Executive Engineer,
State Agricultural Marketing Board,
TNCS Commercial Complex,
Anna Nagar West, Chennai 40.

Now having office at CIPET Road,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai 32.

3. The Asst. Executive Engineer,
State Agricultural Marketing Board,
Vellore Sub Division,
14, Lakshmi Nivas Nilayam,
New Shankaranapalayam Road,
Vellore 632 001. .. Petitioners

-Vs-
1. S. Jaganathan,
S/o. Sabapathy
Thippu Street, Kodakkal Post,
Sholingur 691 105.
North Arcot District.

2. The Registrar,

Central Administrative Tribunal,
Madras 104.

3. State of Tamilnadu,
Rep. by its Secretary,
Department of Agriculture,
Fort St. George,
Madras 9. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.D. Krishnakumar

For Respondent-1 : Mr.M. Palani

:J U D G M E N T

P.K. MISRA, J

This writ petition has been filed by the State Agricultural Marketing Board and two subordinate officers, challenging the order dated 21 .3.2003, passed by the Tamil Nadu Administrative Tribunal in O.A.No.1 010 of 1996, directing the present writ petitioners to regularise the services of the present Respondent No.1 in the regular time scale of pay.

2. The facts giving rise to the present writ petition are as follows :-

The State Agricultural Marketing Board is established under Section 35 of the Tamil Nadu Agricultural Produce Marketing Act, 1987. The main function of the Board is to co-ordinate the working of the Market Committees and other affairs thereof, including programmes undertaken by the Market Committee for development of markets and market areas and to supervise their functions. The Board has an engineering cell with one Executive Engineer and two sub-divisions at Vellore and Madurai. The primary function of the Engineering cell is to execute the construction work for the Market Committees. After completion of a particular construction, the same is handed over to the concerned Market Committee. The Board employs Technical Assistants on daily wage basis to supervise the construction. Junior Engineers/Assistant Engineers are deputed to the Board from time to time. However, the Technical assistants are employed temporarily on N.M.R basis.

The present Respondent No.1, who is a Diploma-holder in Engineering, was sponsored by the Employment Exchange for being appointed as Technical assistant and on being selected by the Board, he was appointed on temporary basis as Technical Assistant under Nominal Muster Roll (N.M.R.) on daily wage basis and posted at Vellore Sub-Division by order dated 5.11.1986. It was of course indicated in the proceedings of the present Petitioner No.2 that such

appointment was purely temporary. Thereafter, the present Respondent No.1 continued in such capacity on daily wage basis with some artificial breaks here and there. Subsequently, he filed W.P.No.9265 of 1995 before this Court, claiming regularisation of his service under the Board. After the said writ petition was admitted, a counter was filed on behalf of the present petitioners, wherein it was indicated that the employees of the Board being Government servants, the writ petition was not maintainable before this Court and case should have been filed before the State Administrative Tribunal. On the basis of the aforesaid stand of the present writ petitioners, a memo was filed to withdraw the same, seeking to move the Tribunal and ultimately, by order dated 2.2.1996, learned single Judge of this Court, while dismissing the writ petition as not maintainable, gave liberty to the present Respondent No.1 to move the State Administrative Tribunal.

Thereafter, O.A.No.1010 of 1996 was filed before the Tribunal praying for a direction to regularise the services of the applicant (present Respondent No.1) as per G.O.Ms.No.107, dated 5.2.1987.

3. A counter was filed on behalf of the present writ petitioners, who were respondents 2 to 4 before the Tribunal. In the said counter, while not disputing the fact that the present respondent No.1 had been sponsored by the Employment Exchange and had been selected and posted as Technical Assistant on N.M.R basis, it was indicated that G.O. Ms.No.107 was not applicable, as the appointment was on N.M.R basis and the applicant was not a contingent staff, but a Nominal Muster Roll worker. It was indicated that G.O.Ms.No.107 dated 5.2.1987 was applicable only to contingent staff and not applicable to a Nominal Muster Roll appointee. It was further indicated that payment of wages to the applicant was made for the number of days he had worked and not for all the days in a month and payment of such wages will depend upon the availability of petty supervision charges at the rate of 2=% on the value of work actually done.

4. The Tribunal, on considering the rival submissions, directed the Board to regularise the services of the applicant, by taking into consideration the long service of his employment as N.M.R and provide him with suitable vacancy with regular time scale of pay. The Tribunal mainly relied upon G.O.Ms.No.107 and observed :-

 ... 5. There is no distinction between a N.M.R. worker and a worker paid out of contingent funds. Even in respect of this applicant, the payment must have been made from out of contingent amount and a N.M.R Register is maintained for the purpose of attendance and paid the daily wages. Therefore, on the specious plea that applicant is only a N.M.R and not a contingent worker, the benefits given under G.O. Ms.No.107 cannot be taken away. The benefits are intended only for persons who have been working on daily wages for more than five years and this also was passed only after the High Courts and Supreme Court have repeatedly given directions to the State and State Agencies to regularise the daily wage earners who have been working for long period.

5. Learned counsel for the Board has challenged the aforesaid

direction of the Administrative Tribunal mainly on the ground that G.O.Ms.No.107 was not applicable to N.M.R employees, as such persons are not paid from contingencies. It is also pointed out that in the absence of a sanctioned post, there could not be any direction for regularisation. It has been also contended in this context that there is no requirement of appointing a technical assistant on permanent basis.

6. In course of hearing of this writ petition, learned counsel for the Board has produced the Nominal Muster Roll details relating to the present Respondent No.1 and has contended that the observation of the Tribunal that employment was for a continuous period of 10 years was not correct. It is of course true that N.M.R Details in respect of the present Respondent No.1 to some extent support the contention of the petitioner in the sense that the employment seems to be on daily wage basis and not throughout the month, but with breaks here and there. However, it is apparent from the said N.M.R. details that except for a gap of few days here and there, the present Respondent No.1 was engaged at different places in connection with various works, such as construction of compound wall, Office-cum-T.Shed, Office building, etc. The said details further indicate that the present Respondent No.1 was being posted at different places. From the aforesaid details, a reasonable conclusion can be inferred to the effect that for all these years, there has been a constant requirement for engaging the present Respondent No.1, even though there has been some breaks here and there. In the aforesaid background, the main contention of the petitioner to the effect that there is no requirement for permanent appointment, does not appear to be justified.

7. It is of course contended that G.O.Ms.No.107 dated 5.2.1987 is not applicable, as the payment is not made from the contingencies and the person cannot be described as a contingent worker. The Tribunal has negatived such a contention by observing There is no distinction between an N.M.R. worker and a worker paid out of contingent funds. Even though by applying hair-splitting logic that the observation may not be found to be correct, we are not persuaded to interfere with the order of the Tribunal. Even assuming that such a G.O., was not strictly applicable, the spirit of such G.O. can be applied in view of the basic fact that there seems to be perennial need for the post and the present Respondent No.1 has worked for a considerable length of time, even though with some artificial breaks, his application for regularisation had been rightly allowed by the Tribunal.

8. Apart from G.O.Ms.No.107, the policy reflected in G.O.Ms.No.257 dated 4.4.1995, regarding regularisation of the N.M.R. Technical Assistants, who had completed 10 years of service under Public Works Department, cannot be lost sight of, even though such a G.O., may not be strictly applicable to the N.M.R. employees under the State Agricultural Marketing Board.

9. Keeping in view the basic facts to the effect that the present Respondent No.1 had been continuously engaged with certain artificial breaks here and there, the direction for regularisation can be said to be a just and equitable direction. It is also to be noticed that the initial

appointment of the Respondent No.1 was not by any backdoor method, but was on the basis of the selection after being sponsored by the Employment Exchange. Even though the initial entry was through the front door, the Respondent No.1 has been treated as a mere door-mat.

10. Learned counsel for the Board has placed reliance upon several decisions of the Supreme Court and contended that the direction for regularisation should not have been made. The first decision relied upon by the learned counsel is 1997 (2) SCC 1(ASHWANI KUMAR & OTHERS v. STATE OF BIHAR & OTHERS). In the aforesaid case, numerous candidates had been appointed in an unauthorised manner and against nonexistent vacancies. A Committee had enquired into the matter and found that initial appointments were in gross violation of the Government instructions and, therefore, illegal and such appointments have been subsequently cancelled. The High Court upheld the action of the Government and ultimately, the Supreme Court observed that when the initial appointments were illegal and void, the question of their regularisation did not arise.

11. Similarly, the learned counsel for the petitioners has placed reliance upon the decision reported in 2003 (3) SCC 485 (Dr.(Mrs.) CHANCHAL GOYAL v. STATE OF RAJASTHAN). In the said case, a Doctor had been appointed under a Municipal Council, purely on temporary basis for six months or till the candidate selected by Public Service Commission is available. The employee in question, even though subsequently selected by the Public Service Commission, did not join, but continued on the basis of an order of extension issued by the Department. Ultimately, her services were terminated on the ground that the candidate selected by the Public Service Commission was available. Even though she had succeeded before the learned single Judge, the Division Bench reversed the decision and dismissed the writ petition, by observing that she had continued merely as a temporary employee without being selected by Public Service Commission and therefore, she has no right to hold the post. Such view of the Division Bench was affirmed by the Supreme Court. The Supreme Court emphasised the fact that appointment of a lady Doctor to the Council was on temporary basis for a period of six months and therefore, there was no scope for directing regularisation of service and ultimately, the Supreme Court upheld the order of termination, as the person did not have any legal right to hold the post.

12. The decision reported in 2003 (5) SCC 388 (MD.U.P. LAND DEVELOPMENT CORPORATION AND ANOTHER v. AMAR SINGH AND OTHERS) is also not applicable. In the said case, the employment was under □Million Wells Scheme□ and since the Corporation decided to discontinue the same, there was consequential termination. In the aforesaid background, the Supreme Court observed that there is no scope for regularisation.

13. The factual scenario in the present case being vastly dissimilar. The ratio of the aforesaid decision is also not applicable to the peculiar facts and circumstances of the present case.

14. On the other hand, we are of the opinion that the ratio of the long line of decisions of the Supreme Court laying down the proposition to the effect that where there is continuous engagement either on daily wage basis or on temporary basis for a long period, it can be well assumed that the need is perennial and instead of continuing such person on daily wage basis or temporary basis, thereby exploiting the person concerned, an ideal employer should absorb such person on temporary basis.

15. For the aforesaid purpose, reference can be made to the decisions reported in 1990 (1) SCC 361 (BHAGWATI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPORATION), 1990 (2) SCC 396 (DHARWAD DISTT. P.W.D., LITERATE DAILY WAGE EMPLOYEES ASSOCIATION AND OTHERS v. STATE OF KARNATAKA AND OTHERS), (1991) 1 SCC 28 (JACOB M. PUTHUPARAMBIL AND OTHERS v. KERALA WATER AUTHORITY AND OTHERS), (1992) 4 SCC 118 (STATE OF HARYANA AND OTHERS v. PIARA SINGH AND OTHERS) and (2004) 1 SCC 605 (RADHA RAMAN SAMANTA v. BANK OF INDIA AND OTHERS). It is not necessary to refer to all these decisions in detail. Suffice it to say that many of the decisions have been referred to and relied upon in the decision of the Supreme Court reported in (2004) 1 SCC 605 (cited supra). As a matter of fact, even in the decision reported in 2003 (3) SCC 48 5 (cited supra), many such decisions have been referred to, but it has been observed that those cases are distinguishable on facts.

16. In view of the aforesaid principles, we do not find any error of law apparent on the face of record in the order passed by the Tribunal and since the order of the Tribunal is in aid of substantial justice, we do not think it fit and proper to interfere with such order. The writ petition is accordingly dismissed without any order as to costs. Connected miscellaneous petitions are closed.

Index : Yes
Internet: Yes
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